IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 273 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIRABHAI LALABHAI VAGHRI & 1 - Appellant(s)
Versus
CHINTAMANI PARASNATHJI DERASAR & 10 - Defendant(s)

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Appearance :

MR MB GANDHI for Appellant(s) : 1 - 2.
MR VC DESAI for Defendant(s) : 1 - 8.
- for Defendant(s) : 9 - 11.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/07/2006

ORAL JUDGMENT

1. The present appeal has been filed by the appellants – original defendants (hereinafter referred to as “the defendants”) challenging the

judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 31st August, 1987 passed in Civil Suit No. 1950 of 1981 in decreeing the suit filed by the respondents herein – original plaintiffs (hereinafter referred to as “the plaintiffs”) by which, the learned City Civil Court while decreeing the suit, has directed the defendants to hand over the vacant and peaceful possession of the suit land as described in para – 13 of the Civil Suit and on which there were five huts. The defendants were also permanently restrained from making any further kachchha construction on any part of the suit land i.e Final Plot No. 72 of T.P. Scheme No.16 and they were also further permanently restrained from obstructing the appellants from entering into open land of Final Plot No. 72.

2. The Civil Suit No. 1950 of 1981 was filed by the plaintiffs against the defendants for possession of the portion of the suit land bearing Final Plot No. 72 and for permanent prohibitory

injunction restraining the defendants from making any further construction in the Final Plot No. 72 and also restraining them from obstructing the plaintiffs in entering into the said Final Plot No. 72. It is also required to be noted at this stage that the appellant No.1 herein – original defendant No.1 of Civil Suit No. 1950 of 1981 had also filed one Civil Suit No. 1254 of 1983 for a declaration that he has become the owner of the suit land by adverse possession and the said suit came to be dismissed.

3. The original defendant No.1 – trust was the owner of the suit land originally bearing City Survey No. 171, O.P. No. 25 of T.P. Scheme No. 16 and F.P. No. 72 of T.P. Scheme No. 16. The original City Survey No. 171 was admeasuring 2178 sq yds. However, on account of re-constitution of the said plots under the T.P. Scheme, the area of City Survey No. 171 was reduced and the trust was allotted Final Plot No. 72 admeasuring 1644 sq yds. The plaintiffs

filed the aforesaid Civil Suit No. 1950 of 1981 for the reliefs stated hereinabove. It was averred in the plaint that the defendants first constructed a hut in north-east portion of Final Plot No. 72 and subsequently, they trespassed upon the adjoining land to the west of their hut and they constructed more huts. It was also further averred that rest of the land of Final Plot No. 72 admeasuring 1569 sq yds was lying open and was in possession of the plaintiffs. It was also further averred that as the defendants intended to trespass upon, more particularly, on Final Plot No. 72, they have also made preparation for constructing the huts on the boundary of the suit plot, therefore, the aforesaid suit came to be filed. It was also further averred that whenever the servants of the trust were going to their suit plot, the defendants were obstructing them and were asking them not to come in the suit plot and they were quarreling with the servants of the trust. On these averments, the plaintiffs filed the aforesaid suit bearing Civil Suit No. 1950 of

1981 for eviction and taking possession of the portion of the land of Final Plot No. 72.

4. The suit was resisted by the defendants. The joint written statement was filed at Exh.17. It was contended on behalf of the defendants that they were in possession of the suit land since last more than 20 years and they have been cultivating the suit land and prior to that, the suit land was in possession of the father of the defendant No.1 for the last 60 years and his father was also cultivating the suit land. The other averments in the plaint were also denied. It was also contended that they have become the owners of Final Plot No. 72 by adverse possession and therefore, requested to dismiss the suit. The learned trial Court raised the issues at Exh.22. As stated above, the appellant No.1 also filed the Civil Suit bearing Civil Suit No. 1254 of 1983 against the plaintiffs with regard to the same subject land claiming decree for a declaration that he has become the owner of the suit land by adverse possession.

Both the suits were consolidated and the evidences were recorded in Civil Suit No. 1254 of 1983. The defendant No.1 examined himself at Exh.39. He also examined his wife Valiben at Exh.55. On his side, two more witnesses were examined namely, Tetabhai Ranchhodbhai Patni at Exh.51 and one Saheba Rajan at Exh.54. On plaintiffs' side one more witness from the Birth and Death Section of the Health Department of the Ahmedabad Municipal Corporation was examined at Exh.61. On the other hand, the plaintiffs examined Estate Manager Shri Umarsinh Jethabhai Kurva at Exh.83, its Rent Collector Shri Parshottambhai Hargovandas Patel at Exh.88 and one Photographer Shri Kumarpal Mangarlal at Exh.89. The learned trial Court after considering the oral as well as documentary evidence held that the defendants were the trespassers, they have failed to produce any evidence with regard to tenancy as alleged and accordingly, passed a decree in favour of the plaintiffs and dismissed the Civil Suit No. 1254 of 1983 by which, the defendant No.1 has claimed

the ownership by adverse possession. Being aggrieved and dissatisfied with the same, the appellants herein – original defendants have preferred the present First Appeal.

5. Shri Chinmay Gandhi, learned advocate appearing on behalf of the appellants has submitted that the learned trial Court has materially erred in holding that the appellants were not in possession for the last more than 20 years. He has also further submitted that the learned trial Court has materially erred in holding that the possession of the appellants was since 1971 only and not prior to that. It is also further submitted that the learned trial Court has materially erred in not declaring the appellants as owners of the property by adverse possession. It is submitted that when it was admitted by the respondents that the land in question is given to the father of the appellants for occupation and therefore, the possession since last 60 years ought to have been accepted. It is also further submitted that the learned trial Court

has materially erred in not properly appreciating the documentary evidences at Exhs. 44 and 46 and therefore, it is requested to allow the present appeal.

6. The appeal is opposed by Shri V.C.Desai, learned advocate appearing on behalf of the respondents herein – original plaintiffs. It is submitted that the learned trial Court has rightly decreed the suit in favour of the plaintiffs by further holding that the appellants cannot be declared as owners by adverse possession as on the one hand, the appellants claimed tenancy right and on the other hand, they have prayed for declaration that they have become the owners by adverse possession and both the pleas are contradictory and therefore, the learned trial Court has rightly refused to pass the decree in favour of the defendants for a declaration that they have become owners by adverse possession and that the defendants have failed to produce any documentary evidence with regard to tenancy and therefore, it is requested to dismiss the

present appeal.

7. The case of the defendants before the learned trial Court in the suit filed by the defendants being Civil Suit No. 1254 of 1983 was that the appellant No.1 herein has become the owner of the entire suit land - Final Plot No. 72 by adverse possession. They have also taken the said contention in the Civil Suit No. 1950 of 1981. So far as claiming ownership by adverse possession is concerned, a person claiming title by adverse possession has to prove that he has been in possession for the requisite period and that his possession was adverse to the real owner. In the written statement, the defendants made out a specific case that they have been in possession of the suit plot as tenants since the time of their fore-fathers i.e since last about 60 years and that proceedings regarding the tenancy rights of the suit plot was going on between the plaintiffs and the defendants. The defendants never pleaded earlier that they have been in possession of the suit plot adverse to

the trust and for the first time, they gave application at Exh.50 in Civil Suit No. 1950 of 1981 for seeking amendment in the written statement. Thus, for the first time, in the year 1985, they have come out with a case of adverse possession. Thus, in view of the above evidence, the learned trial Court was justified in refusing to pass the decree declaring that the defendant No.1 has become the owner by adverse possession.

8. It is required to be noted that the plaintiffs filed the suit for title and for possession. The claim of the plaintiffs was that as their father Lalabhai Ashabhai was the tenant of the suit land and that after the death of said Lalabhai Ashabhai, they have become the tenant of the suit land. Thus, the defendants cannot claim any direct tenancy of the suit land with the trust. There is absolutely no documentary evidence to show and even the defendant No.1 has also not deposed to show that he was the tenant of the suit land at any point of time. It is required

to be noted that the defendants have failed before the revenue authorities. Considering the suspicious circumstances, the learned trial Court has also rightly not believed the certificates at Exhs. 46 and 64 and has right disbelieved the contention on behalf of the defendants that their children were born in the suit land. I have gone through the entire record and on going through the same, it appears that the learned trial Court has not committed any error in decreeing the suit of the respondents herein – original plaintiff. This Court is in complete agreement with the reasoning and findings given by the learned trial Court, while decreeing the suit.

9. For the reasons stated above, the appeal fails and is accordingly dismissed. Interim relief, if any, stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.